

136. Regl. de pratig. No 3 110/18

RULES OF PRACTICE

FOR THE

COURT OF QUEEN'S BENCH,

IN THE EXERCISE OF ITS

CIVIL APPELLATE JURISDICTION.

LOWER CANADA.

QUEBEC:

PRINTED BY T. CARY, 2, BUADE STREET.

1851.

RULES OF PRACTICE

COURT OF QUEEN'S BENCH

CIVIL APPELLATE JURISDICTION

1900

1900

P
C
C
for
sa
or
ti
w
C

PROVINCE OF CANADA, } *In the Court of Queen's Bench.*
LOWER CANADA.

GENERAL RULES

OF THE

*Court in the exercise of its Civil Appellate
Jurisdiction.*

RULES OF JULY TERM, 1850.

IT IS ORDERED—By the Court here:—

I.

That this Court, in the exercise of its Appellate Civil Jurisdiction, be opened at the hour of Ten in the forenoon of each of the Juridical days on which the same is by law appointed to be held, unless an order, or adjournment, to the contrary be made.

II.

That the Queen's Counsel and Advocates, practising in this Court, and the Clerk of the Court, when in the discharge of their respective duties in Court, be habited in black, and in robes and bands,

as heretofore hath been used ; and that no Queen's Counsel, or Advocate, not so habited, and in such robes and bands, be heard in any cause.

III.

That all Records, Registers, Books, and Papers, belonging to and filed in the Court, be kept in the places assigned for the safe custody thereof, in the Court Houses, respectively, at the places where this Court is by law appointed to be held, and be not then removed, or taken therefrom, on any pretence whatever, without the Order of this Court, or of one of the Judges thereof, in writing.

IV.

That the office of the Clerk of this Court, in what relates to its Jurisdiction as a Court of Appeal and Error, be kept in the apartments assigned for it in the Court Houses, respectively, at the places where this Court is by law appointed to be held ; and that the said office, in the said Court Houses, respectively, during the present and every future Term, be open and regular and proper attendance afforded therein, from the hour of Nine in the forenoon, until the hour of Five in the afternoon of every day (Sundays and Holydays excepted), and during the vacation after each Term, from the hour of ten in the forenoon till the hour of three in the afternoon of every day, Sundays and Holydays excepted.

V.

That there shall be prepared and kept, by the said Clerk of this Court, in what respects its Civil Appellate Jurisdiction in his office, a fit and proper Book, in which shall be made the entries therein aftermentioned ; that is to say, every Attorney of this Court, before the first day of September next, shall make, in

the said book an entry, in writing, and to be signed by him, of his name and of his real and elected Domicile, in the Cities of Quebec and Montreal, respectively, that is to say, of his real Domicile in one or other of the said Cities, if resident in either of them, and of his elected Domicile in that in which he is not resident, or of his elected Domicile, in each of the said Cities, if not resident in either of them, at which real or elected Domicile all Pleadings, Summonses, Rules, Orders and Notices, of which the service on him may be required, may lawfully be made. And every Attorney hereafter to be admitted, shall, on his admission, and before he commences practising in this Court, make in the said book a like entry. And as often as any Attorney of this Court shall change his real or elected Domicile, or Domiciles, of which an entry shall have been made as aforesaid, he shall make a like entry of such change; and all Pleadings, Summonses, Rules, Orders and Notices, which do not require personal service, shall be deemed and taken to be sufficiently served on such Attorney, if a copy thereof be left at the place last entered by such Attorney as aforesaid, as his real or elected Domicile, with any person of competent age and discretion resident at, or belonging to such place. And if any such Attorney shall neglect to make such entry as aforesaid, then the fixing up of any Notice, Pleading, Summons, Rule, or Order, for such Attorney, in the said office of the said Clerk of this Court shall be deemed and taken to be service thereof, and as effectual as if the same had been served at such real or elected Domicile as aforesaid.

VI.

That a schedule of all suits depending in this Court, specifying, in each suit, the names of the

parties,—the date of the Writ of Appeal,—or of the Writ of Error,—the time when returned,—or if not returned, the fact of its not being returned—the names of the Attorneys by whom appearances for the parties have been filed,—and the date of such appearance,—and, if not filed, the fact that they have not been filed—the days on which the Reasons of Appeal,—and the Answer thereto,—and the cases of the Parties (if filed) have been filed, and, if not filed, the fact that they have not been filed,—the day on which each suit, if inscribed on the Roll for hearing, hath been so inscribed,—and the day which by such inscription is fixed for the hearing of such suit, shall be made and kept by the said Clerk of this Court, on the first day of the next, and of every succeeding Term; and such schedule shall be deemed and taken, in all parts to be an official Certificate by the said Clerk of this Court, of the state of such suits, severally and respectively, on the first day of the Term, when such schedule shall be laid before the Court as aforesaid.

VII.

That no Writ of Appeal or Writ of Error shall issue from this Court, unless a *Præcipe* for the same, signed by the Attorney suing out such Writ, be first delivered to the proper officer, by whom the said Writ is to be issued: and every such Writ shall be written on Parchment and shall bear the signature of the Attorney, upon whose *Præcipe* the same shall be issued, and shall be made returnable at the place at which this Court shall be held next after the issuing of such Writ, within fifteen days from the date thereof; except such Writs of Appeal and Writs of Error, as may be directed to the Judge of

the Superior Court for the District of *Gaspé*, which shall be made returnable within two Calendar months from the date thereof.

VIII.

That personal service of any Writ of Appeal, or Writ of Error, upon the Attorney who has appeared in the Court below, for the Respondent or the Defendant in Error, as heretofore has been practised, shall in default of the legal service, be held and taken to be legal service.

IX.

That the Writs, Pleadings, Motions and Exhibits, and other paper writings, comprising any record to be hereafter transmitted to this Court shall, by the Prothonotary of the Court from which such record proceeds, at the head of each, be separately numbered respectively from number one to the entire number thereof, and that an Index of reference to the whole, by number, title, and description, under the signature of such Prothonotary, shall be by him annexed to such record.

X.

That the Postage paid by the said Clerk of this Court, on the return to Writ of Appeal and Writs of Error, and the records accompanying them, shall, on demand, be forthwith reimbursed to him by the Attorney of the Appellant or Plaintiff in Error, and, if not so reimbursed, the payment thereof by such Attorney may be immediately enforced, by resort to the Summary Jurisdiction of this Court.

XI.

That on every Writ of Appeal, or Writ of Error, hereafter to be issued it shall be incumbent on the Appellant and Respondent or the Plaintiff and Defendant in Error, respectively, to enter his appearance, in the office of the said Clerk of this Court, on or before the Eighth day next after the day on which such Writ of appeal, or Writ of Error, has been made returnable, and, in default thereof, shall be precluded from entering an appearance in such suit, in which subsequent proceedings may be had *ex parte* against the Party so in default as aforesaid.

XII.

That the Reasons of Appeal, or the Assignment of Errors, as the case may require, in every suit, shall be filed within eight days next after the return of the Writ of Appeal, or Writ of Error, as the case may be, and the transmission of the Record and Proceedings from the Court below, and shall contain, specifically the several grounds and reasons of Appeal, and the several Errors for which the reversal of the Judgment Appealed from is sought; and if the reasons of Appeal, or the Assignment of Errors be not filed within the time aforesaid, it shall be competent to the Attorney of the Respondent or Defendant in Error, by notice in writing under his signature, directed to the Attorney of the Appellant or Plaintiff in Error, in such suit, to demand the Reasons of Appeal or the Assignment of Errors, as the case may require, and, if the Reasons of Appeal, or the Assignment of Errors, be not filed within six days' service of such notice, every such suit in Appeal, or in Error, shall be dismissed with costs.

XIII.

That the answers to the Reasons of Appeal in every suit in Appeal, and the joinder in Error, in every suit in Error, shall be filed within eight days after the filing of the Reasons of Appeal or the assignment of Errors; and if not so filed it shall be competent to the Attorney of the Appellant or of the Plaintiff in Error, as the case may be, by notice in writing under his signature, directed to the Attorney of the Respondent or Defendant in error, in such suit, to demand the Answers to the Reasons of Appeal or the joinder in error; and if such Answer, or joinder in error, shall not, within four days from the service of such notice, be filed, the Respondent or Defendant in error as the case may be shall be wholly precluded from filing an Answer to the Reasons of Appeal, or a joinder in error; and the Appellant or Plaintiff in error may, after notice given to the adverse party of his intention so to do, proceed to a hearing of his suit in Appeal or in Error, *Ex parte*, and to Judgment therein, without the intervention of the Respondent or Defendant in Error.

XIV.

That the cases of the Appellant and Respondent or Plaintiff and Defendant in Error, in every suit in Appeal, or Error, to the number of ten on each side, shall be delivered by the Appellant and Respondent, the Plaintiff and Defendant in Error, respectively to the said Clerk of this Court, to be by him filed, within ten days after the filing of the Answers to the Reasons of Appeal or the joinder in Error. And if the case of the Appellant or the Plaintiff in Error, be not so delivered and filed the suit in Appeal,

or in Error, of such Appellant or Plaintiff in Error, shall be deemed to be deserted, and on Motion of the Respondent or Defendant in Error, shall be dismissed with costs. And, if the cases of the Respondent or Defendant in Error be not delivered and filed as aforesaid, such Respondent or Defendant in Error shall be deemed to have deserted such suit in Appeal, or Error, and the same may be heard *Ex parte*, on the part of the Appellant or Plaintiff in Error, and Judgment rendered therein, without the intervention of the Respondent or Defendant in Error.

XV.

That when and so soon as the Answers to the Reasons of Appeals, or the joinder in Error, as the case may require, shall be filed, it shall be competent to either party, by whom cases have been filed, to set down such suit for hearing, by inscribing the same on a Docket Roll to be kept by the said Clerk of this Court, for that purpose, in Vacation or in Term, of which inscription two days' notice shall be given to the Adverse Party.

XVI.

That after the inscription of a cause for final hearing, it shall be the duty of the said Clerk of this Court, without delay, to deliver to the Judges, respectively, printed Cases, making part of the cases, which have been filed as aforesaid in such case, and furnish the Attorney of each party, who shall have filed his case, on his demand, with a printed Copy of the case of the adverse Party; and he shall retain and file of Record one of the printed cases of the said parties respectively.

XVII.

That it shall be the duty of the said Clerk of this Court, to prepare and keep a Docket Roll of the causes which have been inscribed for hearing, in the order in which they have been inscribed ; from which Docket Roll the causes to be heard shall be called on each day, in the order in which they stand on the said Roll.

XVIII.

That in cases where a suit in Appeal, or in Error, having been inscribed for hearing, and being called from the Roll, the Appellant and Respondent or the Plaintiff and Defendant in Error, shall not appear, or shall not be ready to proceed, every such suit shall be struck from the Roll : and in cases where a suit in Appeal, or in Error, having been inscribed for hearing, and being called from the Roll, the Appellant or Plaintiff in Error, shall not appear, and the Respondent or Defendant in Error shall appear, every such suit shall be dismissed with costs to the Respondent or Defendant in Error ; and in cases where a suit in Appeal, or in Error, having been inscribed for hearing, and being called from the Docket Roll, the Respondent or Defendant in Error shall not appear and the Appellant or Plaintiff in Error shall appear, and be ready to proceed, every such suit shall be heard on the part of the Appellant or Plaintiff in Error, so appearing, *Ex parte*, and such Order and Judgment thereupon made and rendered as to law and Justice shall appertain, without costs in such case to the Respondent or Defendant in Error.

XIX.

That in all suits which shall hereafter be pending in this Court, no more than two Counsel shall be heard in opening, or in answer, and one only in reply.

XX.

That when this Court shall be moved in any suit, upon any special matter, not appearing upon the record or proceedings filed in such suit, such special matter shall be previously authenticated by Affidavit; and a copy of the affidavit, and two days' notice of such Motion served on the adverse party. And no such Motion shall be received, until such Affidavit, and an Affidavit of the service of notice as aforesaid shall be read and filed.

XXI.

That every Motion for an Appeal from an Interlocutory Judgment shall be accompanied with copies of such Interlocutory Judgment and of the pleadings filed in the suit together with copies of such Exhibits and proceedings therein, as may be material and necessary in support of any such Motion.

XXII.

That a copy of every Judgment of this Court, by reason whereof the record in any suit in this Court shall be remitted to the Court below, shall be annexed to the record, and transmitted with the same, under the certificate of the said Clerk of this Court.

XXIII.

That in the computation of time, the common rule *Dies a quo non computatur termino* shall be observed : and in all cases in which a prescribed delay or period, within which something is required to be done, shall expire on a Sunday or Holyday, the same shall *ipso jure* stand and be enlarged to the then next Juridical day.

XXIV.

That all Rules and Orders heretofore made for regulating the practice in Appeal, and in Error, and now in force in this Court, be, and the same are hereby rescinded and annulled.

QUEBEC, 12th July 1850.

(Signed)

J. STUART, C. J.,
J. R. ROLLAND, J. B. R.,
PHI. PANET, J. B. R.,
T. C. AYLWIN, J.

QUEEN'S BENCH—APPEAL SIDE.

T A R I F F.

PROVINCE OF CANADA, } *In the Court of Queen's*
 LOWER CANADA. } *Bench.*

ORDER OF JULY TERM, 1850.

IT IS ORDERED by the Court here, that the several FEES hereinafter specified be allowed to, and taken by, the Counsel and Attornies, and other officers of this Court, for the several services hereinafter mentioned, and that no other Fees be allowed or taken for the said services, or for any other services, without the Order of this court in this behalf made.

By Counsel and Attorneys.

	£	s.	d.
Attendance examining the Record and proceedings of the Court below, and taking instructions to prosecute, or defend in Appeal.....	1	0	0
Præcipe for Writ of Appeal or Writ of Error, and lodging it in the office.....	0	5	0
Attendance to obtain Writ.....	0	5	0
Engrossing Copy of Writ, to be served on Respondent or Defendant in Error.....	0	2	6
Drawing and Engrossing Notice of putting in security on Appeal.....	0	5	0

	£	s.	d.
Copy of Notice to be served.....	0	2	6
Attendance when security is put in.....	0	5	0
Examining Recognizance in Appeal.....	0	11	8
Attendance at the return of the Writ.....	0	7	6
Drawing Appearance, and attendance to file it....	0	5	0
Every attendance at the office, to file Pleadings, or cases, or to obtain Rules.....	0	5	0
Attendance and making Abstract of the Record...	2	6	8
Drawing and Engrossing Reasons of Appeal, or As- signment of Errors.....	1	0	0
Copy for the Respondent or Defendant in Error...	0	10	0
Drawing and Engrossing Answer to Reasons, or Joinder in Error.....	1	0	0
Copy for the Appellant, or Plaintiff in Error.....	0	10	0
Drawing Case.....	3	10	0
Engrossing Copy for Printer, correcting proof sheet,	1	3	4
Attendance and inscribing cause for hearing.....	0	10	0
Drawing and Engrossing Notice of Inscription....	0	5	0
Copy to be served.....	0	2	6
Copy of every Rule to be served on the adverse party	0	2	6
Every necessary attendance in Court.....	0	7	6
Every Motion in Court.....	0	7	6
Every necessary attendance at the office.....	0	5	0
Fee on the argument of every point of law on mo- tion.....	0	11	8
Ditto on every law issue	1	3	4
Ditto on the merits of a cause, whether on one or more days.....	2	6	8
Attendance and remitting the Record to the Court below	0	16	8
Drawing and Engrossing Bill of Costs.....	0	12	6
Copy for adverse party and attendance at taxation,	0	7	6

By the Clerk.

Entering and filing a Præcipe for a writ of Appeal or a Writ of Error.....	0	2	6
Drawing, Engrossing and Sealing Writ.....	0	12	6
Entering and filing return to Writ.....	0	2	6
Entering and filing Appearance.....	0	2	6
Entering and filing Reasons of Appeal, Answer, or other Pleading, each.....	0	2	6

	£	s.	d.
Entering and filing every Petition, Affidavit, Case, or any other paper (those accompanying the return of the Writ excepted).....	0	1	0
Attendance affording communication of Record...	0	11	8
Attendance taking Inscription of Cause for hearing,	0	2	6
Reading any Petition, Affidavit, or written document when required to do so.....	0	1	0
Copies of all papers per sheet of 100 words.....	0	0	6
Entering every Motion.....	0	2	0
Drawing and entering order thereon.....	0	3	0
Copy of Motion and Order.....	0	2	6
Entering a Rule in the office.....	0	2	6
Entering every express and necessary continuance after the Cause is at issue and set down for hearing	0	3	0
Attendance at the hearing of a Cause, chargeable half against each of the parties.....	0	15	0
Attendance at every consultation of the Judges, chargeable half against each party.....	0	5	0
Drawing up and entering judgment on every law issue or point of law argued on motion.....	0	11	8
Drawing up and entering final judgment on the merits.....	1	3	4
Copy of judgment.....	0	5	0
Drawing and engrossing Recognizance on Appeal to the Queen in Council.....	0	10	0
Entering and taking the acknowledgment of it....	0	5	0
Fee on remitting the Record.....	0	10	0

By the Crier.

On every Writ of Appeal or Error.....	0	10	0
On every Appearance filed by a Respondent.....	0	10	0

By the Bailiffs of the Court.

For service of every Writ of Appeal, Notice or Rule, and Certificate thereof.....	0	5	0
For Mileage, the accustomed rate.			

(Signed) J. STUART, C. J.,
J. R. ROLLAND, J. B. R.,
PHI. PANET, J. B. R.,
T. C. AYLWIN, J.

QUEBEC, 12th July 1850.